

absented himself from duty of his own accord. Being only a casual work he had no lien on any post and when he absented himself from duty without any proper authorisation, his name automatically stood removed from the rolls.

On the other hand, Shri Tala Ram has examined one witness Shri Gian Chand, wireman in the respondent Mills besides making his own statement as W.W. 2. He was denied the contention raised on behalf of the management that he had not reported for duty on 18th November, 1970 at the start of the season. According to him he had regularly been working as a Coolie in the Bagases Section in the years 1969-70, 1970-71 and he had got his wages and bonus for these years. Shri Gian Chand W.W. 1 has supported the workman in his contention that his services had been wrongly terminated by the management and one Shri Sewa Ram had been appointed in his place. A copy of the order of the Authority under the Payment of Wages Act has also been produced and is marked as Exhibit W. 1.

The case has been argued on both sides and I have given a careful consideration to the facts on record. There is no denying the fact that Shri Tala Ram was a seasonal employee and he was paid on work-charged basis for the days he actually worked. He was not a permanent or regular employee. No letter of appointment was given to him. The contention raised by the management that he had not reported for duty at the start of the season for the year 1970-71 on 18th November, 1970 is supported by documentary evidence consisting of the relevant entries in the attendance registers. Since he had come on duty only on 7th December, 1970 there was no vacancy as an alternative arrangement had to be made when he had not reported for duty at the beginning of the season. He was, however, given work in some other department (Engineering Department) as a Coolie and being absent on some days he finally gave up the job on 22nd February, 1971 and did not report for duty again. Under the circumstances, his name automatically stood struck off the rolls. The management did not take any further action regarding termination of his services nor was any such action called for taking into consideration the nature of his employment as a casual worker paid on work-charged basis and his own conduct in absenting himself from duty without any proper authorisation. In the circumstances, he had no right or lien on the post as a Coolie in the Bagasse Section or in any other department of the Mills and as such he is not entitled to any relief by way of reinstatement or payment of back wages. That disposes of issue No. 2 and also the term of reference which is decided against him.

In view of the above, the claim of the present workman Shri Tala Ram for reinstatement or payment of back dues is not well founded and the award is made accordingly. There shall however be no order as to costs.

Dated 9th May, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1198, dated 15th May, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 5521-Lab-73/20470.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and management of M/s Spin-Tax Industries (P) Ltd., Bahadurgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 225 of 1972

between

SHRI SARUP SINGH AND THE MANAGEMENT OF M/S SPIN-TAX INDUSTRIES (P) LTD.,
BAHADURGARH

Present

Shri Rajinder Singh Dhiya, for the workman.

Nemo for the management.

AWARD

The management of M/s Spin-Tax Industries (P) Ltd., Bahadurgarh terminated the services of its workman Shri Saroop Singh, Chowkidar, with effect from 25th July, 1972. He raised a demand for his reinstatement to which there was no satisfactory response. This gave him rise to an industrial dispute, and on the receipt of the failure report from the Conciliation Officer, Sonapat, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the above

dispute to this court for adjudication,—vide order No. ID/RK/206-B-72/39452-56, dated 13th November, 1972 with the following term of reference:—

“Whether the termination of services of Shri Saroop Singh was justified and in order? If not, to what relief is he entitled?”

Usual notices were given to the parties. The workman reiterated his claim for reinstatement and back wages contending that his services had been terminated without any justification. The management contested the claim of the workman pleading *inter alia* that no industrial dispute within the meaning of the law existed between the parties. Necessary issues arising from the pleadings of the parties were framed and the case was fixed for evidence.

The management has, however, chosen not to take part in the proceedings. The workman has made his own statement and brought on record the demand notice, postal and acknowledgement receipts copy of the conciliation proceedings. Shri Rajinder Singh Dhiya, President, Bahadurgarh Potteries and General Labour Union, Bahadurgarh has also come into the witness-box.

I have heard the authorised representative of the workman and given a careful consideration to the facts on record which go a long way to establish that after his services had been terminated by the management, he had given the demand notice making for his reinstatement but without any response from the management. The matter was then taken up for conciliation, where also the management did not show any willingness to exceed to his demand and hence the failure report of the Conciliation Officer led to the present reference.

It is further clear from the statement on oath of the concerned workman that during this period of forced unemployment he has not been gainfully re-employed anywhere in spite of best efforts.

So, taking into consideration all the facts and the circumstances of the case I am quite clear in my mind that the management had terminated the services of the concerned workman without any notice, warning or charge-sheet what to speak of holding any proper inquiry against him. Feeling aggrieved he had given the demand notice to the management asking for this reinstatement but his demand was not accepted, and the matter was then taken up for conciliation which ended in failure. By virtue of the amended section 2-A of the Industrial Disputes Act, 1947, the workman was competent to raise this dispute in his individual capacity without the support or espousal of the workmen of the industry.

So, on the facts established in the case, the termination of the services of the concerned workman Shri Saroop Singh is held to be not justified and in order and in the result, he is entitled to reinstatement with continuity of his previous service and full back wages. The award is made accordingly but without any order of costs.

Dated 4th May, 1973.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1123, dated 5th May, 1973.

Forwarded (four copies) to the Secretary to Government, of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 5220-4Lab-73/20474.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and management of M/s Spin-Tax Industries (P) Ltd., Bahadurgarh.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No 226 of 1972

between

SHRI DHARAM PAUL AND THE MANAGEMENT OF M/S SPIN-TAX INDUSTRIES (P) LTD.,
BAHADURGARH

Present :

Shri Rajinder Singh Dhiya, for the workman.

Nemo for the management.

AWARD

The management of M/s Spin-Tax Industries (P) Ltd., Bahadurgarh terminated the services of its workman Shri Dharam Paul Peon, with effect from 23rd July, 1972. He raised a demand for his reinstatement to which there was no satisfactory response. This gave rise to an industrial dispute, and on receipt of the failure report from the Conciliation Officer, Sonapat, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of the section 10 of the Industrial Disputes Act, 1947 referred the above dispute for adjudication to this court,—vide order No. ID/RK/206-A-72/39/64-70, dated 13th November, 1972, with the following term of reference :—

“Whether the termination of services of Shri Dharam Paul was justified and in order ? If not, to what relief is he entitled ?”

Usual notices were given to the parties. The workman reiterated his claim for reinstatement and back wages contending that his services had been terminated without any justification. The management contested the claim of the workman pleading *inter alia* that no industrial dispute within the meaning of the law existed between the parties. Necessary issues arising from the pleading of the parties were framed and the case was fixed for evidence.

The management, however, chosen not to take part in the proceedings. The workman has made his own statement and brought on record the demand notice, postal and acknowledgement receipts, copy of the conciliation proceedings, Shri Rajinder Singh Dhiya, President, Bahadurgarh Potteries and General Labour Union, Bahadurgarh has also come into the witness-box.

I have heard the authorised representative of the workman and given a careful consideration to the facts on record which go a long way to establish that after his services had been terminated by the management, he had given the demand notice asking for his reinstatement but without any response from the management. The matter was then taken up for conciliation, where also the management did not show any willingness to exceed to his demand and hence the failure report of the conciliation officer leading to the present reference.

It is further clear from the statement on oath of the concerned workman that during this period of forced unemployment he has not been gainfully re-employed anywhere in spite of best efforts.

So, taking into consideration all the facts and the circumstances of the case, I am quite clear in my mind that the management had terminated the services of the concerned workman without any notice, warning or charge-sheet what to speak of holding any proper inquiry against him. Feeling aggrieved he had given the demand notice to the management asking for his reinstatement but his demand was not accepted and the matter was taken then up for conciliation which ended in failure. By virtue of the amended section 2-A of the Industrial Disputes Act, 1947 the workman was competent to raise this dispute in his individual capacity without the support or espousal of the other workman of the industry.

So, on the facts established in the case, the termination of the services of the concerned workman Shri Dharam Paul is held to not justified and in order and in the result, he is entitled to reinstatement with continuity of his previous service and full back wages. The award is made accordingly but without any order of costs.

Dated 4th May, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 1124. dated 5th May, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 5219-4Lab-73/20476.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and management of M/s Municipal Committee, Safidon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 155 of 1972
between

SHRI JAI BHAGWAN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, SAFIDON
Present.—

Shri S. N. Vats and Shri Prem Parkash for the workmen.
Shri Dharam Pal Sharma, for the management.

AWARD

This reference under clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 has arisen out of the following facts.

Shri Jai Bhagwan concerned workman was in the service of the Municipal Committee, Safidon (hereinafter to be called the Committee) as an Octroi Moharrir. There were charges of corruption and inefficiency against him and he was dismissed from service with effect from 8th October, 1966 allegedly after proper enquiry into the said charges. Feeling aggrieved, he preferred an appeal against the order of his dismissal from service which was dismissed by the learned Deputy Commissioner, Jind on 19th February, 1968. He also filed a civil suit to challenge the validity of the dismissal order which was, however, withdrawn on 20th June, 1969 with the leave of the court to institute a fresh suit on the same cause of action.

Thereafter Shri Jai Bhagwan sought his remedy by raising a dispute in accordance with the provisions of the Industrial Disputes Act, 1947 and, on receipt of the failure report from the Conciliation Officer, the Governor of Haryana was pleased to refer the dispute for adjudication to this court, —vide Order No. ID/KNL/145-A-72/14805-9, dated 19th April, 1972, with the following term of reference :

"Whether the termination of services of Shri Jai Bhagwan was justified and in order? If not, to what relief is he entitled ?"

Usual notices were given to the parties and they put in their respective written statements. Shri Jai Bhagwan reiterated his claim for reinstatement and back wages contending that no proper enquiry had been held against him into the alleged charges of corruption and inefficiency and his dismissal from service was, therefore, not justified and in order. The management controverted his above allegations and contested his claim mainly on the ground that a proper enquiry had been held against him into the charges of corruption and inefficiency and the same having been duly established the impugned order of his dismissal from service had been rightly made taking into consideration the findings of the Enquiry Officer. The validity of the reference was also questioned on the grounds that the Octroi Department was not an industry and the dispute being of an individual nature no industrial dispute within the meaning of the law existed.

My learned predecessor framed the following three issues in the case :—

1. Whether the reference is bad, because it is an individual dispute and is not covered by section 2(K) of the Industrial Disputes Act ?
2. Whether the Octroi is not an industry ?
3. Whether the termination of services of Shri Jai Bhagwan was justified and in order ? If not, to what relief is he entitled ?

Preliminary issues Nos. 1 and 2 were decided against the Committee and in favour of the workman vide my order dated 8th October, 1973. As for issue No. 3, which is precisely the same as per the term of reference stated above, the Committee has relied upon the enquiry said to have been conducted against this workman. The original records of the enquiry and documents pertaining thereto were shown to the workman at the time of admission and denial of the documents and copies of the relevant records have been produced in the case. The workman has also brought on record certain documents including copies of certain resolutions passed by the Committee. No other evidence has been led on either side.

Arguments have been addressed by the authorised representatives of the parties and I have been referred to the relevant documents having bearing on the matter in issue. Before going into the merits of the case, it is necessary to discuss still another contention raised on behalf of the Committee with regard to the validity of the present reference. It has been argued that the demand for the setting aside of the dismissal order passed against this workman on 8th October, 1966 was never raised on the Committee and rejected by it so as to constitute an industrial dispute within the meaning of the law, as laid down by Hon'ble the Supreme Court in the well known Sandhu Resettlement Corporation case. This contention though raised at a rather belated stage at the time of arguments, certainly does not appear to be without force. It is a common ground between the parties that the present reference has arisen out of the demand notice dated 11th November, 1970 given by Shri Jai Bhagwan to the Administrator, Municipal Committee, Safidon which forms part of the reference. A perusal of this demand notice would show that it was given for the execution or implementation of the resolution No. 300, dated 29th November, 1970 passed by the Committee for the re-employment of Shri Jai Bhagwan in supersession of the dismissal order in question and not for setting aside the dismissal order as such. This plea was no doubt not taken by the Committee in so many words in the written statement but the defect now pointed out is patent from the record and facts admitted on both sides. A copy of the said resolution No. 300 of 29th November, 1970 has been produced by Shri Jai Bhagwan and this is one of the documents relied upon by him in the case. A perusal of the resolution would reveal that Shri Jai Bhagwan had forgone his claim for back wages in the event of his being taken back on duty as Octroi Moharrir and further that the implementation of this resolution was subject to the

approval of the learned Deputy Commissioner which, as stated by the authorised representative of the Committee was never granted and the request made in this behalf *vide* resolution No. 300 referred to above had been finally turned down.

In view of the above, the question of the implementation of the said resolution for which the demand notice, dated 11th November, 1970 was given did not arise. No other demand notice is stated to have been given. The law is well settled on the point. The particular demand in respect of which an industrial dispute is sought to be raised should first be made on the employer and rejected by it before taking up the matter for conciliation to constitute an industrial dispute within the meaning of the law. The mere communication of the demand by the Conciliation Officer is not enough. In the instant case, the demand for setting aside the dismissal order, dated 8th October, 1966 as such was never raised by the present workman as is clear from the facts discussed above. The conciliation proceedings had been initiated only on his demand notice for the execution of the implementation of the aforesaid resolution No. 300 of 29th November, 1970 and that very demand has given rise to the present reference on the basis of the failure report submitted by the Conciliation Officer without the approval of the learned Deputy Commissioner the said resolution No. 300 was a mere waste paper and no claim for reinstatement could be brought by the present workman by virtue of this resolution which had ceased to exist for all practical purposes.

Assuming for the same argument that the above contention raised by the authorised representative of the Committee at a late stage at the time of arguments is not tenable and the industrial dispute the subject matter of the present reference should be deemed to have been properly raised. The question which is of vital importance and arises for consideration in the case is, whether a just and proper enquiry had been held against this workman on the charges of corruption and inefficiency levelled against him. The charge-sheet was given to this workman on 19th February, 1966. It reads as under.

"1. Ram Lal, President, Municipal Committee, Safidon charge you, Shri Jai Bhagwan, Octroi Moharrir as under :-

1. That while on duty at the railway gate octroi post on 4th February, 1966 you received Re 00.75 paise from one Shri Karnail Singh, son of Shri Sant Singh of village Malakpur who had imported Gadapart by rail. The R/R concerned was duly entered in form O-7 and also stamped in token of having charged the octroi duty of the feed for issuing a transit pass but actually no receipt was issued on account of recovery of the octroi duty or as an alternative you issued no transit pass for the gadapart in question. The amount has thus been allegedly misappropriated by you.
2. That you collected Rs 00.42 paise from one Hikam Chand, son of Shri Tulsi Ram of village Phephrana *vide* receipt No. 120 of form TSII on 27th November, 1965 but in the counterfoil of the said receipt you have entered the amount of Rs 00.12 only. The amount of toll tax being Rs 00.12 paise each for two cards on which a fee of twenty-four paise was due, was further made good by you by depositing Rs 00.12 paise as less charges *vide* receipt No. 43/103, dated 5th January, 1966. You are thus alleged to have misappropriated the amount excessively charged by you and also tampered with the record.
3. That on 14th November, 1966 while posted at railway gate octroi post you were absent from duty at 11.15 A.M. (approximate time) and left the barrier unattended. The President of the Committee who in your absence picked up the revenue stamp register from your barrier by way of attesting your absence from duty had returned the register to you later on. You have thus been responsible to neglect your duty and overlooking the interest of the Committee.
4. That on 17th June, 1965 you issued a cycle token No. 1481 in favour of one Shri Dhupa, son of Shri Giasu of village Bhadhergarh but are alleged to have kept the original receipt and licences with you which after tampering with you issued the same to one Tara Chand of village Dadwara by charging Rs 2 from him. The amount charged from Tara Chand of village Dadwara has not been accounted for nor any token issued to him. Thus against one receipt, licence and token, you have charged fee from two different persons. You are responsible to cheat the tax-payers in the name of the Committee and also responsible for tampering with the record and inappropriating the municipal funds.
5. That you charged Rs 9 from one Krishan Lal, son of Shri Dayal Chand cart driver of Safidon on the pretext of issuing him a licence for driving the cart. No application was received from him nor any licence issued but to satisfy him against extracting a sum of Rs 9 from him you are alleged to have delivered him licence plate No. 34 which was entrusted to you for delivering to the real licensee.
6. Your work and conduct in the past also have been very unsatisfactory and still there are a few other complaints of misconduct and corruption in notice of the Committee.
7. You are, therefore, called upon to explain in writing as to why departmental action may not be taken against you on account of the charges mentioned above. Your explanation, if any, should reach the undersigned on or

before 25th February, 1966, failing which it will be presumed that you have no explanation to offer, and the Committee will proceed against you."

He had submitted his explanation on 25th February, 1966, denying all the charges and his explanation is on the record. The validity of the enquiry has been questioned on more than one ground. To start with, it has been argued that the charge-sheet was not given by the proper authority. A perusal of the record would show that the charge-sheet was given by the then President of the Committee. I have been referred to the Business Bye-laws of the Committee, according to which the President was competent to take such an action only against the employees getting pay upto Rs 45 per mensem. Nothing has been brought on the record to show that Shri Jai Bhagwan was getting more than Rs 45 as his basic pay at that time. Then the charge-sheet given by the President was considered by the Committee in its meeting held on 16th March, 1966 and an enquiry against him was ordered vide resolution No. 199 of that date and he was further placed under suspension pending the enquiry. A copy of the resolution is on the record. The action of the President in giving the charge-sheet was thus approved by the Committee. Moreover, no such objection appears to have been raised by Shri Jai Bhagwan before the Enquiry Officer. The contention now raised is thus without force and in the circumstances, the charge-sheet cannot be held to be a nullity.

It has next been argued that the enquiry was not held after due notice to the workman and in his presence. This contention again is not warranted by the facts on record. Shri Jai Bhagwan had appeared before the Enquiry Officer, sought adjournment of the proceedings which was granted, although not to the extent he wanted. He was further given an opportunity to lead his defence and his statement is on the record to the effect that he did not want to produce in his defence anything beyond what had been already stated by him in his explanation to the charge-sheet. A copy of the explanation to the charge-sheet is also on the record. Some original proceedings of the enquiry have been shown to Shri Jai Bhagwan by the authorised representative of the Committee during the course of arguments and he has admitted at the Bar his signatures on those proceedings including his application for adjournment of the proceedings. In the face of all this, he cannot be heard to say that the enquiry had been held at his back without giving him reasonable opportunity of being heard or defending himself.

Still another argument has been advanced by the authorised representative of the workman that the report of the Enquiry Officer was not supplied to him nor was he given a second show-cause notice before dismissing him from service, which was necessary according to rules. This contention is again not warranted by the facts on record. The report of the Enquiry Officer was considered by the Committee in its meeting held on 26th September, 1966, vide resolution No. 105 of that date. It was directed that further show-cause notice be given to him proposing the punishment of dismissal from service. A copy of that resolution has been produced and also the show-cause notice, dated 5th October, 1966 and his own detailed explanation dated 5th October, 1965. I have not been referred to any specific communication with regard to the supply of a copy of the enquiry report to this workman. But a perusal of his detailed reply submitted by him to the show-cause notice would show that he had in fact been given a copy of the said report. He had submitted his explanation questioning the findings of the Enquiry Officer item-wise. Moreover, the entire enquiry was held in his presence and he had dealt with each and every findings of the Enquiry Officer in his reply to the show-cause notice. In the circumstances, the non-supply of the copy of the report of the Enquiry Officer could not be held to be fatal to the enquiry.

The last though not the least objection raised on behalf of the workman is that the impugned order of his dismissal from service was not a speaking order and it was never communicated to him. A careful scrutiny of the record would, however, show that after taking into consideration his reply to the further show-cause notice proposing the punishment of dismissal from service, he had been given a personal hearing and he actually appeared in the meeting attended by all the members of the Committee on 8th October, 1966, when his case was fully considered. A copy of the resolution passed by the Committee on that day is on record and it would be clear from the perusal of that resolution that he had, in fact, tendered apology and appealed for mercy. But taking into consideration the very serious nature of the charges proved against him in the said enquiry and his past bad record, it was not thought to be a fit case for showing him any leniency in the matter of awarding punishment. The members of the Committee were not supposed to be well versed with the technicalities of law and procedure. They had fully agreed with the findings of the Enquiry Officer. It was not necessary for them to give an exhaustive judgement with detailed reasons. From the reading of the order itself, it cannot be said that the Committee had not applied its mind fully to the facts of the case before awarding the punishment to the workman. The decision to dismiss him from service which was unanimous and was made after giving him personal hearing was actually announced to him. He had filed an appeal against this order to the Deputy Commissioner and also a civil suit in the court of the Sub-Judge at Jind. It can not, therefore, be believed that the impugned order was never communicated to him.

That disposes of the entire case and taking into consideration all the facts and circumstances discussed above, I do not find any substance in the objections raised on behalf of the workman to the validity of the enquiry which is proved to have been properly held against him after giving him reasonable opportunity of being heard and defending himself. No principle of natural justice is shown to have been violated by the Enquiry Officer in conducting the enquiry. There is no allegation that the Enquiry Officer was in any way biased or prejudiced against him. I, therefore, do not find anything wrong with the enquiry.

Noting worth consideration has been urged by the authorised representative of the workman with regard to the quantum of punishment awarded in the case and taking into consideration the serious nature of allegations of corruption and in efficiency proved against the workman, the punishment of dismissal from service awarded to

him can not be held to be excessive and not commensurate with his guilt especially when his past record had also not been found to be satisfactory by the punishing authority. It has not been shown that the past record was used as an effective decision to dismiss him from service and not merely to consider if any leniency could be shown to him in the matter of awarding punishment.

For the reasons aforesaid, issue No. 3 is decided against the workman and the order of his dismissal from service is held to be justified and in order. In the result, he is not entitled to any relief by way of reinstatement or payment of back wages. The award is made accordingly. There shall, however, be no order as to costs.

O.P. SHARMA.

Presiding Officer,
Labour Court, Haryana, Rohtak.

Dated 14th May, 1973.

No. T/31, dated 14th May, 1973

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 5290-4Lab-73/20480.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and management of M/s Sham Ice Oil and General Mills, Panipat.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 86 of 1972

Between

SHRI RAM ACHHEVAR AND THE MANAGEMENT OF M/S SHAM ICE OIL AND GENERAL
MILLS, PANIPAT

Present—

Shri Onkar Parshad for the workman.

Shri D. S. Rekhi and Shri Harish Singh, for the management.

AWARD

Sarvshri Ram Achhevar and Bhushan Lal were in the service of M/s Sham Ice Oil and General Mills, Panipat, as Boiler Firemen. There were allegations that Shri Ram Achhevar had abducted the wife of another workman Shri Baij Nath. The management terminated his services and also of Shri Bhushan Lal. They raised a protest against the above action taken by the management but without any satisfactory response. The matter was taken up for conciliation which ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute in respect of Shri Ram Achhevar for adjudication to this court,—vide order No. ID/KNL/165-A-72/8669, dated 2nd March, 1972, with the following term of reference:—

"Whether the dismissal of Shri Ram Achhevar was justified and in order? If not, to what relief is he entitled?"

By a separate order No. ID/KNL/165-A-72/8669, dated 2nd March, 1972, the dispute in respect of Shri Bhushan Lal was also referred for adjudication to this court, with the following term of reference:—

"Whether the termination of services of Shri Bhushan Lal was justified and in order? If not, to what relief is he entitled?"

Usual notices were given to the parties and they put in their respective written statements giving rise to the following three issues which are common in both the cases:—

- (1) Whether the objection regarding the validity of the constitution of the court can be raised in this very court?

- (2) Whether the reference is illegal because the management was given no opportunity to reject the demand of the workman before the reference was made ?
- (3) If issue No. 2 is not proved, whether the termination of services of the concerned workman was justified and in order ? If not, to what relief is he entitled ?

The following additional issue was framed in reference No. 86 of 1971 pertaining to Shri Ram Achhevar:—

"Whether the applicant conditionally absented himself and therefore was deemed to have abandoned his service ?"

My learned predecessor consolidated both the cases by order dated 21st June, 1972, as there were common questions of law and fact are involved in both the cases.

The management has examined two witnesses, Shri Harish Singh Partner M.W. 1 and Shri Bhagwan Dass, Accountant, M.W. 2. The workmen on the other hand, have made their own statements besides examining Shri Karan Singh, Secretary, Textile Mazdoor Sangh, Panipat.

Arguments have been addressed on both sides and I have given a considered thought to the facts on record. The issues involved may be taken up separately.

Issue No. 1.—This issue has not been pressed nor can the question of the validity of the constitution of this court be decided here. It will not be out of place to mention here that Hon'ble the High Court for the States of Punjab and Haryana has been pleased to hold in the case of M/s Steel Kraits, Panipat versus its workmen that the constitution of the Labour Court, Haryana, at Rohtak with Shri P. N. Thukral as its Presiding Officer, was valid. The issue is, therefore, decided accordingly in favour of the workmen.

Issue No. 2.—It has vehemently been urged on behalf of the management that the demand was not first raised on the management and rejected by it before taking up the matter for conciliation and as such no industrial dispute existed within the meaning of the law as laid down by Hon'ble the Supreme Court, in the Sandhu Resettlement Corporation case. The contention is devoid of force, as according to the statement of Shri Karan Singh, Secretary of the Union, the workmen had approached the management and had resorted to sitting Dharana when their demand for reinstatement was not acceded to. Then the receipt of the demand notice dated 6th December, 1971, which forms part of the order of reference in both the cases is not denied by the Proprietor Shri Harish Singh. Taking into consideration the facts discussed above, it can not be said that the workmen concerned had not raised the demand on the management before raising a regular dispute under section 10 of the Industrial Disputes Act, 1947. The issue is decided against the management and in favour of the workmen.

Issue No. 3.—From the evidence led on behalf of the management, it appears that there were allegations of abduction of the wife of Shri Baij Nath against Shri Ram Achhevar and the woman had been recovered by the Police in execution of the warrants under section 100 of the Code of Criminal Procedure. Shri Baij Nath is said to have assaulted his wife causing serious bodily injuries, for which offence he was arrested by the Police and is undergoing a sentence of imprisonment. The management had given a charge-sheet to Shri Ram Achhevar, but admittedly no enquiry was held into any charge of misconduct levelled against him. No satisfactory evidence has been brought on record to show that he had actually absented from duty without proper authorisation. The relevant entries from the attendance registers have not been brought on record. It is hardly necessary to mention here that the conduct of this workman in the alleged abduction of the wife of co-worker Baij Nath can not be discussed in the present proceedings in the absence of any charge-sheet against him by the management regarding his misconduct on that score in the discharge of his duties and a proper domestic enquiry into that charge. The impugned action of the dismissal or termination of the services could be taken by the management only after giving him proper opportunity of being heard and defending himself into the allegation of misconduct against him. But that is not the case here. His dismissal/termination of services cannot, therefore, be held to be justified and in order. That disposes of the additional issue No. 4 and issue No. 3 which are decided against the management and in favour of Shri Ram Achhevar concerned workman.

The management has made out no better case to justify the impugned order of termination/dismissal of the services of the other workman Shri Bhushan Lal. He had been working in this concern for 2 or 3 years and his services were terminated without any charge-sheet with effect from 2nd December, 1971. The management has tried to prove that he had absented himself from duty without any proper authorisation from 2nd December, 1971; and he was, therefore, dismissed from service on 9th December, 1971. Intimation whereof was given to him by registered post. The relevant entries from the attendance registers have not been brought on record nor has it been shown that any notice had been given to him earlier to the letter of dismissal Ex. M.W. 1/1, postal receipt Ex. M. W. 1/2 on record. Some documents pertaining to the alleged abduction of the wife of Shri Baij Nath have been brought on record against this workman also. But as already discussed, in the absence of any charge of misconduct and proper enquiry, no action could legally be taken against him by way of termination or dismissal of his services. It has nowhere been stated that any enquiry was held against this workman. The issue is, therefore, decided in favour of Shri Bhushan Lal and against the management.

From the facts discussed above, it would appear that as a matter of fact, the management had been actuated in taking the impugned action of dismissal/termination of services in respect of both the workmen concerned on account of their alleged involvement in the abduction of the wife of their co-worker Shri Baij Nath, but without any proper charge or enquiry against them. Neither of them is shown to have been prosecuted for the said offence what to speak of their conviction by any competent court. The order of dismissal/termination of services by the management in respect of both the workmen, therefore, deserves to be struck down and they are entitled to be re-instatement with continuity of their previous service. It has been stated by both the workmen that inspite of their best efforts they have not been gainfully employed any where. In the circumstances of the case, I think it would be reasonable if they are also entitled to half of their wages for the period of their forced unemployment. The award is made accordingly. There shall be no order as to costs.

Dated 15th May, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana, Rohtak

No. 1201. dated 18th May, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 15th May, 1973

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 5223-4 Lab-73/20482.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Rajindera Steel Traders, Bahadurgarh.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 14 of 1973

between

Shri Hari Chand and the management of M/s Rajindera Steel Traders, Bahadurgarh.

Present—

Shri Rajinder Singh Dhiya, for the workman.

Nemo, for the management.

AWARD

Shri Hari Chand was a workman of M/s Rajinder Steel Traders, Bahadurgarh. The management terminated his services allegedly from 9th November, 1972. He raised a demand for reinstatement but without success. On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred the above dispute for adjudication to this court,—vide order No. ID/RK-A-73/10130-34, dated nil, with the following term of reference :—

Whether the termination of services of Shri Hari Chand was justified and in order? If not, to what relief is he entitled?

Usual notices were given to the parties. Shri Rajinder Singh Dhiya, President, Bahadurgarh Potteries and General Labour Union, Bahadurgarh, who represents the workman has stated that the dispute has been settled by the workman, and he has received his dues from the management in full and final settlement of his claims giving up his right of reinstatement or re-employment.

In view of the above, no further proceedings are called for in the case and a no dispute award is made as per the statement of the authorised representative of the concerned workman. There shall be no order as to costs.

Dated the 3rd May, 1973.

O.P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1121, dated 5th May, 1973.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer.

Labour Court, Haryana,
Faridabad.

The 22nd May, 1973

No 5294-4Lab-73/20484. In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workman and the management of M/s. Market Committee, Samalkha.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 11 of 1971

between

SHRI OM PARKASH AND THE MANAGEMENT OF M/S. MARKET COMMITTEE,
SAMALKHA

Present—

Shri Raghbir Singh, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

Shri Om Parkash was working as Mandi Supervisor in the Market Committee, Samalkha at Rs 214 per mensem. The management terminated his services with effect from 31st March, 1971. He raised a demand for reinstatement contending that his services were terminated allegedly due to unsatisfactory work but without giving any charge-sheet or opportunity of being heard. There was no response from the management. This gave rise to an industrial dispute. The matter was taken up for conciliation. The management did not show any willingness to reinstate the workman or settle the dispute with him in any other manner.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred the above dispute for adjudication to this court *vide* order No. ID/KNL/159-A/23032-36, dated 27th July, 1971, with the following terms of reference.

Whether the termination of services of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?"

On receipt of the order of reference usual notices were given to the parties. The workman filed his statement of claim reiterating his above demand for reinstatement and back wages as earlier raised through the demand notice dated 23rd April, 1971, giving rise to the present reference. The management contested his claim and raised some legal objections giving rise to the following two preliminary issues besides the issue as per the term of reference as stated above.

(1) Whether the respondent Committee is not an industry?

(2) Whether the applicant is not a workman?

Issues Nos. 1 and 2 were found against the management —*vide* order dated 3rd June, 1972 of my learned predecessor.

Issue No. 3

With regard to issue No. 3, the management has examined its Secretary Shri Ram Rattan a M.W. 1 besides placing reliance upon several documents consisting of the requisition made from the Employment Exchange

for filling the temporary post of Mandi Supervisor sanctioned up to 31st March, 1971 Exhibit M. 1, sanction of the said post given by the Haryana State Agriculture Marketing Board, Chandigarh,—*vide* letter dated 7th December, 1970 Exhibit M. 2., card issued by the Employment Exchange Exhibit M. 4, letter of appointment of the present workman dated 28th December, 1970 Exhibit M. 4, letter dated 25th March, 1971 of the President of the Market Committee to the Secretary asking for his report as to how many of the additional posts created on 29th December, 1970 were to be retained beyond 31st March, 1971 and also about their work during this period Exhibit M. 5, report of the Secretary Exhibit M. 6 to the effect that all the additional posts should be retained beyond 31st March, 1971 but that the work of Shri Om Parkash Mandi Supervisor was not satisfactory. The letter of the termination of the services of Shri Om Parkash dated 31st March, 1971 Exhibit M. 7.

On the other hand, the workman has made his own statement besides recalling Shri Ram Rattan Secretary of the respondent Committee as W.W. 1. Shri Ram Rattan has stated that Shri Rajeshwar Singh had been appointed as Mandi Supervisor in June, 1971 who worked till 31st March, 1972 and thereafter no Mandi Supervisor had been appointed. Shri Om Parkash concerned workman has deposed that his services had been terminated by the management without any justification and a fresh Mandi Supervisor had been appointed in his place. He has further stated in this cross-examination that the Officer Incharge of the Employment Exchange had not explained to him that his employment as Mandi Supervisor would be only up to 31st March, 1971.

The case has been argued on both sides and I have considered the facts on record.

The contention raised on behalf of the management is that the sanction of the post of the Mandi Supervisor against which the present workman was appointed being only upto 31st March, 1971, his services automatically stood terminated on that date. It has further been urged that in the requisition letter Exhibit M. 1 it had been made clear that this post was temporary up to 31st March, 1971 and in the appointment letter Exhibit M. 4 also it had been made clear in so many words that the post was purely temporary and could be terminated at any time without assigning any reason. It has been argued that in the circumstances this workman had no legal right to continue in service after the period ending 31st March, 1971 especially when no sanction of the post for the period beyond 31st March, 1971 had been obtained. This contention which apparently seems to be reasonable is, however, not warranted by the facts on record. In the first instance, there is no mention in the card issued to this workman by the Employment Exchange that the post of the Mandi Supervisor against which he was seeking appointment would come to an end on 31st March, 1971 nor has anything of the sort been mentioned in the appointment letter No Exhibit M. 4 issued to him. All that has been mentioned in this letter is that the appointment of this workman was temporary and could be terminated at any time without assigning any reason.

There is another suspect of the case which deserves special consideration. In the letter of termination of the services of this workman Exhibit M. 7 on record, it has been stated in so many words that his work was not satisfactory, as per monthly progress reports submitted by him in the office, and for that reason his services were no longer required by the respondent Committee after 31st March, 1971. There is no mention in this letter that the additional post of the Mandi Supervisor against which he had been appointed was not to continue after 31st March, 1971 or that the respondent Committee had no intention of asking for further extension of this post. By no stretch of imagination can this order be considered as an order of discharge of the service of the workman simpliciter on the expiry of the term for which the post had been sanctioned. The order carries with it stigma regarding the inefficiency of the workman and unsatisfactory work done by him during the period of his employment which was not permissible without giving him an opportunity of being heard and defending himself. The law is well settled. Nobody can be condemned unheard.

The plea taken by the management that the services of the present workman were not required for want of sanction of the post beyond 31st March, 1971 is further classified by the statement of its Secretary Shri Ram Rattan recalled as W.W. 1, wherein he has admitted in clear words that Shri Rajeshwar Singh had been appointed Mandi Supervisor in June 1971 and he had worked till 31st March 1972. Shri Om Parkash present workman having been appointed earlier on this post should have been allowed to continue after 31st March, 1971 when according to the report of the Secretary Exhibit M. 6, all the additional posts were required to be continued beyond 31st March, 1971 and approval for the continuance of the post in question had manifestly been obtained as otherwise Shri Rajeshwar Singh could not have been appointed Mandi Supervisor in the vacancy caused by the termination of the services of Shri Om Parkash.

Assuming for the sake of argument that the work of Shri Om Parkash during the period had not been found to be satisfactory, the proper thing would have been to pass the order of the termination of his services without assigning any reason. He could not be condemned as an inefficient worker without giving him a chance of being heard and without holding a proper inquiry against him. So, taking into consideration all the facts and the circumstances of the case as discussed above, the termination of the services of the workman cannot be held to be justified and in order. The issue is decided accordingly in his favour and against the management.

The question which next arises for consideration in the case is as to what relief is the workman entitled to. As already observed, he was appointed as Mandi Supervisor with effect from 29th December, 1970 against an additional post which had been temporarily created. The permanent post of Mandi Supervisor was already in existence and Shri Inder Singh had been working against that post since 16th December, 1969. It has further come in evidence that Shri Rajeshwar Singh was appointed Mandi Supervisor after the termination of the services of the

present workman sometime in June, 1971 on and he worked till 31st March, 1972. The present workman was since a temporary hand, the question of his appointment against the permanent post of a Mandi Supervisor did not arise. He was, however, entitled to continue in service in his capacity as additional Mandi Supervisor so long as that post lasted and no fresh recruitment could be made in his place without establishing any charge of misconduct or in efficiency against him. It is not clear from the evidence produced on both sides, whether the additional post of the Mandi Supervisor is still in existence or not, but the termination of his services having been held to be not justified and in order, he would be entitled to reinstatement as additional Mandi Supervisor provided the post still exist. He would further be entitled to 50 per cent of his wages for the period from the date of the illegal termination of his services till the date the post of the additional Mandi Supervisor remains in existence. There shall be no order as to costs.

Dated the 11th May, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 1199, dated 18th May, 1973

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court Haryana, Rohtak.

The 23rd May, 1973

No. 5288-4Lab-73/20486.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Supreme Steel & Allied Industries, Bahadurgarh

**BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT
HARYANA, ROHTAK.**

Reference No. 4 of 1973

between

**SHRI INDER SINGH AND THE MANAGEMENT OF M/S SUPREME STEEL ROLLING &
ALLIED INDUSTRIES, BAHADURGARH**

Present

Shri Rajinder Singh Dahiya, for the workmen.
Shri B. R. Grover, for the management.

AWARD

By order No. JD/RK/209-B-72/595-99, dated 5th January, 1973 of the Governor of Haryana, the following dispute between the management of M/s Supreme Steel Rolling & Allied Industries, Bahadurgarh and its workman Shri Inder Singh was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947.

“Whether the termination of services of Shri Inder Singh was justified and in order? If not, to what relief is he entitled?”

Usual notices were given to the parties. An amicable settlement has been arrived at as per the memorandum of settlement Ex.M.3 and Shri Inder Singh concerned workman has received payment of Rs. 600/- found due as per mutual calculations in full and final settlement of his claims, giving up his right of reinstatement or re-employment,—vide voucher Ex.M.1 and receipt Ex.M.2. There is now no dispute left between the parties as stated by their authorised representatives.

A no dispute award is, therefore, made. There shall be no order as to costs.

Dated the 14th May, 1973.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1202, dated the 18th May, 1973

Forwarded (four copies) to the Secretary to Government, of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Lourt Court, Hayana.
Rohtak.

The 25th May, 1973

No. 5285-4Lab-73/20616.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s. Universal Refrigeration Industries, Bahadurgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Application No. 14 of 1972 under Section 33-A of the Industrial Disputes Act, 1947 and Application No. 6 of 1972 under Section 33(1) of the said Act

between

SHRI RAM PHAL WORKMAN AND THE MANAGEMENT OF M/S. UNIVERSAL REFRIGERATION INDUSTRIES, BAHADURGARH

Present.—

Shri Onkar Parshad, for the workman.

Shri R. C. Sharma along with K. Kumar for the management.

AWARD

This order will dispose of this complaint under section 33-A of the Industrial Disputes Act, 1947, made by Shri Ram Phal welder of M/s. Universal Refrigeration Industries, Bahadurgarh and application No. 6 of 1972, brought by the management under section 33(1)(b) of the said Act. The facts material for the decision may shortly be stated as under :—

Shri Ram Phal concerned workman has been in the service of M/s. Universal Refrigeration Industries, Bahadurgarh for the last several years. The workman of this establishment had raised certain demands regarding fixation of grades and pay scales etc. which was registered as Reference No. 40 of 1972. Shri Ram Phal brought his complaint on 25th July, 1972 with the allegation that the management had terminated his services without any justification on 22nd December, 1969 and feeling aggrieved he had raised a dispute No. 67 of 1970 which was decided in his favour and the management had been directed to reinstate him,—vide award dated 23rd February, 1971. It was further alleged that he had been taken back on duty on 21st May, 1971 but he was placed under suspension on 29th May, 1971 with the direction that he should produce fitness certificate from the Civil Surgeon Rohtak. According to him the fitness certificate required by the management was produced on 2nd February, 1972 and he was allowed to join his duties but in spite of all this the management refused him work with effect from 28th June, 1972 without any justification and this act of the management being in contravention of the provisions of section 33 of the Industrial Disputes Act, 1947 on account of the pendency of reference No. 40 of 1972. He was entitled to be reinstated with back wages.

Notice of the above complaint was given to the management. The allegation of Shri Ram Phal were controverted and it was stated that he had neither been discharged nor dismissed from service and no contravention of the provisions of section 33 of the Act had been effected. The following issues arose for determination in the case.

Whether there has been contravention of the provision of section 33 of the Industrial Disputes Act?
If so, to what relief is the claimant entitled to?

In the meantime, the management had also moved application No. 6 of 1972 asking for permission to dismiss this workman from service as he was medically unfit to discharge his duties. The workman has contested this application. Since common points were involved in both the cases, the same were consolidated as desired by the parties to avoid duplication of work.

The management has examined four witnesses including Shri K. Kumar Manager M.W. 1, Shri Gopal Singh Foreman M.W. 2, Shri Ishwar Singh Welder M.W. 3, Shri Jai Dayal Helper M.W. 4. The sum and substance of the disposition made by M.W.'s is that Shri Ram Phal had met with an accident while working with M/s. Hyderabad Asbestos Cement Products Ltd., Ballabgarh resulting into serious injuries to his right hand and

he was, therefore, incapable of discharging his duties as a Welder. It has further been stated that although he had not been removed or discharged from service he had absented himself from duty of his own accord without any proper authorisation nor had he produced fitness certificate as required by the management.

The documentary evidence relied upon by the management consists of the letter dated 25th May, 1972 addressed to the E.S.I. Corporation Dispensary Bahadurgarh for the examination of Shri Ram Phal Exhibit M-1, another letter dated 16th June, 1972 for the same purpose Exhibit M-2, letter dated 27th May, 1972 addressed to Shri Ram Phal for getting himself examined at the E.S.I. Dispensary, Exhibit M. 3, letter dated 19th June, 1972 received from the said dispensary Exhibit M-4, Medical Certificate dated 3rd February, 1972 Exhibit M-5.

On behalf of the workman concerned two witnesses have been examined namely, Shri Hira Mani Turner W.W. 1, Shri Sant Kumar Turner W.W. 2 and Shri Ram Phal has made his own statement Exhibit W.W.3. According to the statements made by the workman and his witnesses he was fit to work and give full production without any help. The documents relied upon by the workman include the affidavit of Shri Kamlesh Kumar Manager Exhibit W-1, Leave Book Exhibit W-2.

The case has been argued on both sides and I have given a careful consideration to the facts on record. As already pointed out the service of Shri Ram Phal Welder had been terminated by the management with effect from 22nd December, 1969 and feeling aggrieved he has raised a regular dispute which was decided in his favour and the management was directed to reinstate him with full back wages *vide* award dated 23rd February, 1971. It has come in evidence that after this award the management did take him back on duty but according to him he was again refused work with effect from 28th June, 1972 and his back wages were also not paid. The contention raised on behalf of the management is that he had met with an accident while he was working with M/s. Hyderabad Asbestos Cement Products Ltd., Ballabgarh during the pendency of his dispute No. 67 of 1970 resulting into serious injuries to his right hand and he was therefore, incapable to discharge of his duties as a Welder. He was asked to produce fitness certificate from the Chief Medical Officer, Rohtak which he did not and hence the application for permission to dismiss him from service.

Shri Ram Phal concerned workman is admittedly not a protected workman and that being so prior permission of this Tribunal to dismiss him from service, as contemplated under section 33(3) of the Industrial Disputes Act, 1947 was not necessary. According to the showing of management itself he has not yet been dismissed or discharged from service and the question of asking for any approval, as contemplated under section 33(1)(b) of the act also does not arise. The management has not brought on record any medical certificate showing that this workman is intact unfit to discharge the duties of a Welder. The application brought by the management for permission to dismiss, or discharge him from service is thus altogether misconceived.

The question that next arises for consideration is whether the management has contravened the provision of section 33 of the Industrial Disputes Act as alleged by Shri Ram Phal concerned workman. In view of the specific denial of the management on this point the burden was on him to establish this fact. All that his witness have stated is that he is fully capable discharging the duties of Welder without any help inspite of the injuries caused to his right hand while he was working with M/s. Hyderabad Asbestos Cement Products Ltd., Ballabgarh. The management admits that he is still on its rolls and no action has so far been taken regarding his discharge or dismissal from service. Manifestly there has been no contravention of the provisions of section 33 of the Industrial Disputes Act, 1947. It will not be out of place to mention here that the award has already been given in reference No. 40 of 1972 on account of the pendency of which the present complaint was filed by Shri Ram Phal and it has been held that there being no industrial dispute existing between the parties within the meaning of the Act, the said reference was bad in law. The law is well settled. In view of the said award in reference No. 40 of 1972 it could not be said that there was any pendency when the action in question had been taken by the management against this workman so as to attract the provision of section 33-A of the Act to justify the present complaint.

From the facts discussed above, it would appear that both the permission application filed by the management and the complaint filed by the workman are misconceived and the same shall stand dismissed as being not maintainable under the provisions of the law. The management having not terminated the services of Shri Ram Phal Welder after his reinstatement in accordance with the award dated 23rd February, 1971 in reference No. 67 of 1970 nor having discharged or dismissed him from service on account of any misconduct, the continuous to be in the service of the management entitled to his dues as per the terms and conditions of his service and in the absence of any allegation of misconduct and proof of inefficiency the management has no right to refuse him work.

Both the complaint filed by the workman and the permission application filed by the management are accordingly dismissed in the light of my above observations. There shall be no order as to costs.

The 15th May, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 512, dated the 17th May, 1973.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 15th May, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.